

AMENDED IN SENATE AUGUST 17, 2010

AMENDED IN SENATE JUNE 22, 2010

AMENDED IN ASSEMBLY APRIL 20, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2706**

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**Introduced by Assembly Member Bonnie Lowenthal  
(Coauthor: Assembly Member Hall)**

February 19, 2010

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An act to amend Section 51.7 of the Civil Code, relating to civil rights.

LEGISLATIVE COUNSEL'S DIGEST

AB 2706, as amended, Bonnie Lowenthal. Civil rights: homeless persons.

Existing law sets forth various personal rights and provides that all persons within California have the right to be free from violence, or intimidation by the threat of violence, because of, among other characteristics, their race, color, religion, ancestry, national origin, political affiliation, or sex. Existing law further permits an individual whose exercise or enjoyment of specified personal rights has been interfered with to bring a civil action for damages, including actual damages, exemplary damages, attorney's fees, injunctive relief, and other appropriate relief. Existing law requires the Department of Fair Employment and Housing to receive, investigate, and conciliate complaints that an individual's personal rights have been violated.

This bill would specify that homeless persons, as defined, are entitled to the rights set forth under existing law, and would provide that a homeless person has the right to be free from violence or intimidation

by threat of violence directed against that person on the basis of that person's status as a homeless person. The bill would also provide that these provisions shall not be construed to enlarge or diminish an existing duty, if any, by an owner of residential rental or commercial property to protect a homeless person who is present on the property from violence or intimidation by threats of violence.

*This bill would incorporate additional changes to Section 51.7 of the Civil Code, proposed by AB 1680, contingent upon the prior enactment of that bill.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 51.7 of the Civil Code is amended to  
2 read:

3 51.7. (a) All persons within the jurisdiction of this state have  
4 the right to be free from any violence, or intimidation by threat of  
5 violence, committed against their persons or property because of  
6 political affiliation, or on account of any characteristic listed or  
7 defined in subdivision (b) or (e) of Section 51, or position in a  
8 labor dispute, or because another person perceives them to have  
9 one or more of those characteristics. The identification in this  
10 subdivision of particular bases of discrimination is illustrative  
11 rather than restrictive.

12 (b) (1) This section includes any violence, or intimidation by  
13 threat of violence, committed against the person or property of a  
14 homeless person because the person is, or is perceived to be, a  
15 homeless person.

16 (2) For purposes of this section, "homeless person" means:

17 (A) A person who does not have a fixed, regular, and adequate  
18 nighttime residence.

19 (B) A person that has a nighttime residence that constitutes any  
20 of the following:

21 (i) A supervised, publicly or privately operated shelter  
22 designated to provide temporary living accommodations, including,  
23 but not limited to, welfare hotels, congregate shelters, and  
24 transitional housing.

25 (ii) An institution that provides a temporary residence for  
26 individuals intended to be institutionalized.

1 (iii) A public or private building or designated area that is not  
2 ordinarily designed for, or ordinarily used for, sleeping  
3 accommodations for persons.

4 (3) This subdivision shall not be construed to enlarge or diminish  
5 an existing legal duty, if any, by an owner of residential rental or  
6 commercial property to protect a homeless person from violence,  
7 or intimidation by threats of violence, because the homeless person  
8 is physically present on the owner's property or other property  
9 controlled by the owner incidental to ownership of the rental  
10 property.

11 (c) This section does not apply to statements concerning  
12 positions in a labor dispute which are made during otherwise lawful  
13 labor picketing.

14 *SEC. 1.5. Section 51.7 of the Civil Code is amended to read:*

15 51.7. (a) All persons within the jurisdiction of this state have  
16 the right to be free from any violence, or intimidation by threat of  
17 violence, committed against their persons or property because of  
18 political affiliation, or on account of any characteristic listed or  
19 defined in subdivision (b) or (e) of Section 51, or position in a  
20 labor dispute, or because another person perceives them to have  
21 one or more of those characteristics. The identification in this  
22 subdivision of particular bases of discrimination is illustrative  
23 rather than restrictive.

24 (b) (1) *This section includes any violence, or intimidation by*  
25 *threat of violence, committed against the person or property of a*  
26 *homeless person because the person is, or is perceived to be, a*  
27 *homeless person.*

28 (2) *For purposes of this section, "homeless person" means:*

29 (A) *A person who does not have a fixed, regular, and adequate*  
30 *nighttime residence.*

31 (B) *A person that has a nighttime residence that constitutes any*  
32 *of the following:*

33 (i) *A supervised, publicly or privately operated shelter*  
34 *designated to provide temporary living accommodations, including,*  
35 *but not limited to, welfare hotels, congregate shelters, and*  
36 *transitional housing.*

37 (ii) *An institution that provides a temporary residence for*  
38 *individuals intended to be institutionalized.*

1     (iii) *A public or private building or designated area that is not*  
2 *ordinarily designed for, or ordinarily used for, sleeping*  
3 *accommodations for persons.*

4     (3) *This subdivision shall not be construed to enlarge or*  
5 *diminish an existing legal duty, if any, by an owner of residential*  
6 *rental or commercial property to protect a homeless person from*  
7 *violence, or intimidation by threats of violence, because the*  
8 *homeless person is physically present on the owner's property or*  
9 *other property controlled by the owner incidental to ownership of*  
10 *the rental property.*

11     (c) (1) *No person shall require another person to waive any*  
12 *legal right, penalty, remedy, forum, or procedure for a violation*  
13 *of this section, as a condition of entering into a contract for goods*  
14 *or services, including the right to file and pursue a civil action or*  
15 *complaint with, or otherwise notify, the Attorney General or any*  
16 *other public prosecutor, or law enforcement agency, the*  
17 *Department of Fair Employment and Housing, or any court or*  
18 *other governmental entity.*

19     (2) *No person shall refuse to enter into a contract with, or refuse*  
20 *to provide goods or services to, another person on the basis that*  
21 *the other person refuses to waive any legal right, penalty, remedy,*  
22 *forum, or procedure for a violation of this section, including the*  
23 *right to file and pursue a civil action or complaint with, or*  
24 *otherwise notify, the Attorney General or any other public*  
25 *prosecutor, or law enforcement agency, the Department of Fair*  
26 *Employment and Housing, or any other governmental entity.*

27     (3) *Any waiver of any legal right, penalty, remedy, forum, or*  
28 *procedure for a violation of this section, including the right to file*  
29 *and pursue a civil action or complaint with, or otherwise notify,*  
30 *the Attorney General or any other public prosecutor, or law*  
31 *enforcement agency, the Department of Fair Employment and*  
32 *Housing, or any other governmental entity shall be knowing and*  
33 *voluntary, and in writing, and expressly not made as a condition*  
34 *of entering into a contract for goods or services or as a condition*  
35 *of providing or receiving goods and services.*

36     (4) *Any waiver of any legal right, penalty, remedy, forum, or*  
37 *procedure for a violation of this section that is required as a*  
38 *condition of entering into a contract for goods or services shall*  
39 *be deemed involuntary, unconscionable, against public policy,*

1 *and unenforceable. Nothing in this subdivision shall affect the*  
2 *enforceability or validity of any other provision of the contract.*

3 (5) *Any person who seeks to enforce a waiver of any legal right,*  
4 *penalty, remedy, forum, or procedure for a violation of this section*  
5 *shall have the burden of proving that the waiver was knowing and*  
6 *voluntary and not made as a condition of the contract or of*  
7 *providing or receiving the goods or services.*

8 (6) *The exercise of a person's right to refuse to waive any legal*  
9 *right, penalty, remedy, forum, or procedure for a violation of this*  
10 *section, including a rejection of a contract requiring a waiver,*  
11 *shall not affect any otherwise legal terms of a contract or an*  
12 *agreement.*

13 (7) *This subdivision shall not apply to any agreement to waive*  
14 *any legal rights, penalties, remedies, forums, or procedures for a*  
15 *violation of this section after a legal claim has arisen.*

16 (8) *This subdivision shall apply to any agreement to waive any*  
17 *legal right, penalty, remedy, forum, or procedure for a violation*  
18 *of this section, including an agreement to accept private*  
19 *arbitration, entered into, altered, modified, renewed, or extended*  
20 *on or after January 1, 2011.*

21 ~~(b)~~

22 (d) *This section does not apply to statements concerning*  
23 *positions in a labor dispute which are made during otherwise lawful*  
24 *labor picketing.*

25 (e) *Nothing in this section shall be construed to negate or*  
26 *otherwise abrogate the provisions of Sections 1668 and 3513.*

27 SEC. 2. *Section 1.5 of this bill incorporates amendments to*  
28 *Section 51.7 of the Civil Code proposed by both this bill and AB*  
29 *1680. It shall only become operative if (1) both bills are enacted*  
30 *and become effective on or before January 1, 2011, (2) each bill*  
31 *amends Section 51.7 of the Civil Code, and (3) this bill is enacted*  
32 *after AB 1680, in which case Section 1 of this bill shall not become*  
33 *operative.*